

**Before the
Federal Communications Commission
Washington, DC 20554**

2001 SEP -4 A 11: 22

In the Matter of)
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)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Reg 6 & 8 SW/Ctrl/W Srv Co-op)
Marshall, Minnesota)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

RECEIVED

File No. SLD-199902

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER**Adopted: August 28, 2001****Released: August 29, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review by Reg 6 & 8 Sw/Ctrl/W Srv Co-op (hereinafter "Service Co-op").¹ Service Co-op seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying one of Service Co-op's Funding Year 2 requests for support under the schools and libraries universal service mechanism.² For the reasons discussed below, we grant the Request for Review and remand to SLD for further consideration of the request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that, with one limited exception, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.⁴ The Commission

¹ Letter from Denise Hoek, Reg 6 & 8 Sw/Ctrl/W Srv Co-op, to Federal Communications Commission, filed April 14, 2000 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(a).

reasoned that competitive bidding would ensure fiscal responsibility and would be the best means for ensuring that eligible schools and libraries are able to receive services at the most competitive rates.⁵

3. The Commission's competitive bidding rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant lists the services for which it seeks discounts.⁶ The Administrator assigns each FCC Form 470 a unique identifying number, which in Funding Year 2 was called a Universal Service Control Number (USCN). The Administrator must then post the FCC Form 470 on its website and the applicant is required to wait 28 days before making a commitment to a selected service provider.⁷ The Commission's rules provide a limited exemption from the 28-day competitive bidding requirement for applicants that have pre-existing contracts as defined by the Commission's rules.⁸ After the FCC Form 470 has been posted for 28 days, and the applicant has selected a service provider, the applicant must submit to the Administrator an FCC Form 471, which lists the services that have been ordered.⁹

4. Item 10 of Block 3 of the Funding Year 2 FCC Form 470 directs the applicant to check the box if it has a pre-existing contract.¹⁰ If an applicant checks Item 10, SLD will not post its Form 470.¹¹ Here, Service Co-op filed two separate Funding Year 2 Forms 470 relevant to the pending Request for Review. In the first Form 470, USCN 261340000137230, Service Co-op checked Item 10 in Block 3, indicating that it had a pre-existing, binding contract. Therefore SLD did not post that Form 470.¹² Service Co-op did not check Item 10 of Block 3 of its second Form 470.¹³ That Form 470, USCN 390330000120972, sought support for Internet

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 480 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

⁶ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470); 47 C.F.R. § 54.504(b); *Universal Service Order*, para. 575.

⁷ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁸ 47 C.F.R. § 54.511(c).

⁹ 47 C.F.R. § 54.504(c).

¹⁰ FCC Form 470, Block 3.

¹¹ 47 C.F.R. § 54.511(c).

¹² FCC Form 470, Reg 6 & 8 Sw/Ctrl/W Srvc Co-op, USCN 261340000137230, filed January 14, 1999.

¹³ FCC Form 470, Reg 6 & 8 Sw/Ctrl/W Srvc Co-op, USCN 390330000120972, filed January 14, 1999.

access, long distance and local service, and cellular phone service.¹⁴ Accordingly, SLD posted the second Form 470.

5. In Funding Request Number (FRN) 171379 of its FCC Form 471, Service Co-op cited to the first Form 470, USCN 261340000137230, as support for a request for telecommunications service, specifically local phone service from US West.¹⁵ In a Funding Commitment Decision Letter issued November 23, 1999, SLD denied this request, stating that the request cited to a Form 470 that had not been posted, and that the 28-day bidding period was therefore not satisfied.¹⁶ Service Co-op appealed to SLD, attaching a copy of the second Form 470, USCN 390330000120972, and asserting that this Form 470 supported the request.¹⁷ On March 31, 2000, SLD denied the appeal, finding again that the request was not properly posted.¹⁸ Service Co-op then filed the pending Request for Review, again asserting that the request for local service is supported by the second Form 470.¹⁹

6. Upon reviewing the record, we find that the second Form 470, USCN 390330000120972, does support FRN 171379. Further, although USCN 390330000120972 was not cited in FRN 171379, Service Co-op did cite the correct FCC Form 470 in its Appeal to SLD, as well as attaching a copy.²⁰ Under SLD's procedures, SLD will grant appeals when the applicant has cited the wrong Form 470 in an FRN but did have a Form 470 that supports the FRN and cites that correct Form 470 in its appeal to SLD.²¹ Because this procedure is applicable here, we find that SLD should have granted the appeal. We therefore reverse and remand Service Co-op's application for further consideration of FRN 171379 in light of Form 470 USCN 390330000120972.

¹⁴ *Id.*

¹⁵ FCC Form 471, Reg 6 & 8 Sw/Ctrl/W Srv Co-op, filed March 31, 1999, at 2.

¹⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Denise Hoek, Reg 6 & 8 Sw/Ctrl/W Srv Co-op, dated November 23, 1999, at 4.

¹⁷ Letter from Denise Hoek, Reg 6 & 8 Sw/Ctrl/W Srv Co-op, to Schools and Libraries Division, Universal Service Administrative Company, filed December 14, 1999, at 1.

¹⁸ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Denise Hoek, Reg 6 & 8 Sw/Ctrl/W Srv Co-op, dated March 31, 2000, at 1.

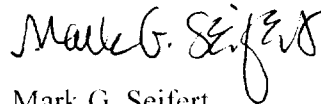
¹⁹ Request for Review at 1.

²⁰ Appeal to SLD at 1, attachment.

²¹ See SLD Website, <www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on April 14, 2000 by Reg 6 & 8 Sw/Ctrl/W Srv Co-op. Marshall, Minnesota, is GRANTED and this application is remanded to SLD for further action consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division